

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants:	Canis <i>et al.</i>	Conf. No.:	7110
Serial No.:	09/816,624	Art Unit:	2143
Filing Date:	03/23/2001	Examiner:	Neurauter, George C.
Title:	SYSTEM AND METHOD FOR MAPPING A NETWORK	Docket No.:	END9-2000-0145US1 (IBME-0007)

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Sir:

Applicants respectfully request a panel of experienced examiners perform a detailed review of appealable issues for the above-identified patent application pursuant to the Pre-Appeal Brief Conference Pilot Program. Applicants submit that the above-identified application is not in condition for appeal because the Office has failed to establish a *prima facie* case of anticipation based on an error in facts. Claims 1-28 are pending in this application.

Turning to the rejection, in the Final Office Action, claims 1-28 are rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. Claims 1-3, 6-7, 10-13, 15-19, 22-25 and 28 are rejected under 35 U.S.C. §102(b) as allegedly being anticipated by Pulsipher *et al.* (U.S. Patent No. 5,948,055), hereafter “Pulsipher.” Claims 4-5, 8-9, 14, 20-21 and 26-27 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Pulsipher in view of Steele *et al.* (U.S. Patent No. 6,282,175), hereafter “Steele.” Applicants submit that these rejections are clearly not proper and without basis.

Initially, each of the features of the invention is described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor, at the time the application was filed, had possession of the claimed invention. With particular respect to the limitations “software information” and “device characteristic information,” as argued in the March 13, 2006 Request for Reconsideration, page 2, lines 18-20 of the original specification, *inter alia*, recites “...the proper management and control of IT operations may also require *information* pertaining to *device characteristics* as well as any *software* installed on the devices.” Request for Reconsideration, page 11; see also page 1, lines 15-21; page 12, lines 6-23 of the original specification. To this extent, the limitations that the Office objects to are, at the very least implicit or inherent, if not express, and thus, the disclosure meets the standard set by MPEP §2173.05 and the Interim Guidelines of 22 November, 2005. Request for Reconsideration, page 11.

Furthermore, at least one feature of the claimed invention is not taught by the reference. As argued in the March 13, 2006 Request for Reconsideration, with respect to independent claim 1, Pulsipher fails to teach collecting device identification and detail information from devices on the network by communicating with each device to retrieve the device identification and detail information. See Request for Reconsideration, page 12. In the Advisory Action mailed April 6, 2006, the Examiner argues and cites passages in support of the premise that Pulsipher teaches active retrieval of data from devices on the network. The passages cited by the Office teach using an SNMP communications protocol “...to communicate with remote stations.” However, this passage of Pulsipher simply indicates the communications protocol and not the manner in which information is gathered. As argued in the Request for Reconsideration of March 13, 2006, the network monitor of Pulsipher is a passive monitor that “...receive[s] events from other

devices, such as a router, in the network.” Page 12, citing Pulsipher, col. 7, lines 42-44, 47-49.

This is in contrast to the claimed invention, which communicates with each device to *retrieve* information. Thus, while Pulsipher *receives* information by monitoring communications using a particular communication protocol, the claimed invention establishes communications with devices to *retrieve* their information. Request for Reconsideration, page 9.

Pulsipher also does not teach collecting the device identification and detail information at predetermined scheduled times as claimed in of claim 1 of the claimed invention. See Request for Reconsideration, pages 13-14. The Office, in its Advisory Action, asserts that Pulsipher discloses polling, and surmises that a reasonable suggestion is made that this polling may be used in conjunction with what it deems the “active collection” of Pulsipher. However, the only reference to polling in Pulsipher is a passage, which recites “[a]nother advantage of the internet monitoring system is that it implements cooperating management and/or collection stations that can share data, thereby reducing redundant and unnecessary polling.” Col. 3, lines 56-59. To this extent, Pulsipher teaches away from “active collection” and its included “redundant and unnecessary polling” and opts instead for a passive monitoring system that reduces such polling. Furthermore, as argued in Applicants’ Request for Reconsideration, the sharing of data to eliminate polling in Pulsipher indicates that the collection stations can share data (presumably that has already been collected) and does not specify that the actual collection of the data is performed at predetermined scheduled times. Page 14. Because of this feature of the claimed invention, if it is known, for example, that certain persons that connect to the network have laptops that are only connected during the morning while others in the same situation only connect during the afternoon, the claimed invention can be scheduled to collect the information at 10:00 a.m., 2:00 p.m. and 4:00 p.m. Pulsipher does not teach this functionality.

Still further, Pulsipher does not teach collecting device identification and detail information, wherein the detail information includes device characteristic information and software information. See Request for Reconsideration, pages 14-15. In the Office's Advisory Action, the Examiner equates this feature of the claimed invention with the collection by Pulsipher of objects and topology data for the objects, which may include: an interface or device address, an interface or device type, an interface or device manufacturer and whether an interface or device supports the SNMP protocol. Col. 7, line 65 through col. 8, line 6. However, as argued in Applicants' Request for Reconsideration, page 15, this topology data of Pulsipher does not have both device identification and detail information, wherein the detail information includes device characteristic information (e.g., how much RAM a workstation currently has) and software information (e.g., that workstation A has Microsoft WordTM and/or the software version). As such, the network monitor does not and could not receive the same type of information as the claimed invention.

Yet still further, there is no motivation or suggestion in the references themselves or elsewhere in the art for combining the Steele reference with Pulsipher. As argued in the Request for Reconsideration of March 13, 2006, the computers of Steele have the information collected from them, not monitored as it is sent elsewhere as in Pulsipher. In addition, the operating system information of Steele is not the type of information that is sent in communications such as those monitored by Pulsipher. Thus, there is no expectation of success, as a combination of Pulsipher and Steele as proposed by the Office would not function in such a manner as to provide the Pulsipher network monitor with operating system information.

Accordingly, Applicants submit that the Office has failed to state a prima facie case of obviousness, and this application is not in condition for appeal and should either be allowed as is, or re-opened for further prosecution.

With respect to the rejections of independent claims 7, 12, 17 and 23, Applicants note that each claim includes at least one feature similar to claim 1. Further, the Office relies on the same arguments and interpretations of Pulsipher as discussed above with respect to claim 1. To this extent, Applicants herein incorporate the arguments presented above with respect to claim 1, and respectfully requests withdrawal of the rejections of these claims for the above-stated reasons.


With respect to features in the dependent claims not specifically referenced herein, the dependent claims are believed to be allowable based on the above arguments, as well as for their own additional features.

Applicants respectfully submit that the application is not in condition for appeal. Should the examining panel believe that anything further is necessary to place the application in better condition for allowance or for appeal, they are requested to contact Applicants' undersigned attorney at the telephone number listed below.

Date: May 12, 2006

Hoffman, Warnick & D'Alessandro LLC
75 State Street, 14th Floor
Albany, New York 12207
(518) 449-0044
(518) 449-0047 (fax)

Respectfully submitted,



Hunter E. Webb
Reg. No.: 54,593

RAD/hew